

**REMARKS/ARGUMENTS**

Reconsideration and allowance in view of the foregoing amendment and the following remarks are respectfully requested.

The disclosure was objected to because of a noted informality. The replacement paragraph beginning at page 16, line 12 has been corrected above to correct the apparent font error in the July 30, 2007 amendment.

Claims 8 and 10 were rejected under 35 USC 112, second paragraph. Claims 8 and 10 have been amended above to correct the matters noted by the Examiner.

Claims 1, 3-7 and 9-11 were rejected under 35 USC 102(b) as anticipated by Makino. Claim 8 was rejected under 35 USC 103(a) as being unpatentable over Makino. Applicant respectfully traverses these rejections.

A feature of the invention as defined in claim 1 is that gas holes 13 and 14 formed in the side wall 11 of the first cover (i.e., inner cover 1) are located closer to the base side of the cover assembly 31 than the gas holes 20 of the second cover (i.e., outer cover 2). The invention as defined in claim 1 also refers to a positional relationship between the first cover 1 and holes 20 of the second cover 2. Specifically, the top end 121 of the first cover 1 is located vertically between the first and second portions 201 and 202 of the perimeter of at least one of the gas holes 20 of the second cover 2. As more specifically recited in claim 3, the top end 121 of the first cover is located at a predetermined distance  $L1$  from the first portion 201 of the gas hole 20 of outer cover 2, where  $L1 \leq 0.95R$ . This results in a quick exchange of the gas within the cover assembly 31 without obstructing the flow of gas to ensure a quick response rate of the gas sensor.

The Examiner characterizes Makino as disclosing a structure wherein the top end of the first cover is located between the top and base ends of holes 63a of the second cover 6A, referring to Figure 6A. Applicant respectfully disagrees. At the outset, it is

respectfully noted that Figure 6A is a schematic illustration and, therefore, it is difficult to determine with certainty the relative positions of the parts. However, from a close review of Figure 6A, which is possible by clicking on the electronic, on-line Makino drawing, it appears that the top end of the first, inner cover 6(b) is level with the portion of the perimeter of the hole 63(a) closest to the top end of the cover assembly and, thus, it does not appear to be between the top side portion and base side portion of the perimeter of holes 63(a). This is further understood from the corresponding description of Figure 6A in column 10, beginning at line 47. As explained at lines 50-51, in particular, the second side gas inlets 63(b) and 63(a) are in positions corresponding to the tapering portion 6(t). Thus, the teaching of Makino is that the holes should each be facing the tapered portion 6(t). Makino clearly does not teach or suggest that hole 63(a) should extend beyond the top end of the first, inner cover 6(b).

Even if Makino is considered to "anticipate" a disposition of the top end of the inner cover between the top end portion and base end portion of the perimeter of 63(a) because of the depiction in Figure 6A, there is clearly no teaching in the Makino specification or in Figure 6A, of the further limitations of, e.g., applicant's claim 3, that the top end of the first cover is located at a predetermined distance  $L1 \leq 0.95R$  from the first portion (top end portion) of the perimeter of the hole in the second cover. Thus, Makino does not anticipate the distance  $L1$  feature of applicant's claim 3. Because Makino teaches that the hole should face the tapered portion and does not provide a teaching regarding a positional overlap between the holes and the top end of the inner cover, it is respectfully submitted that the spacing of the top end at a predetermined distance  $L1$  is not obvious from Makino either. The remaining art of record does not overcome the deficiencies of Makino in this regard.

In view of the foregoing, reconsideration and withdrawal of the Examiner's rejection over Makino is solicited.

Claims 1 and 3-11 were rejected under 35 USC 103(a) as unpatentable over Kato. Applicant respectfully traverses this rejection.

The Examiner cites Figure 11 as allegedly meeting the limitations of applicant's claims except for the recited feature of claim 1 that all of the side wall holes of the first cover are located closer to the base end of the cover assembly than all the gas holes of the second cover. However, the Examiner alleges that it would have been obvious to modify Kato to meet this limitation because Kato discloses several embodiments of the cover assembly and explains, in relation to the embodiment of Figure 1, that the relative position of the side wall holes of the inner and outer covers prevents the invasion of water. Applicant respectfully traverses the Examiner's summary conclusion that it would be obvious to dispose all the side wall holes of the first cover closer to the base end in spite of the depiction to the contrary in Figure 11 of Kato. Even though Kato teaches plural embodiments, it is noted that in all embodiments of Kato, other than the Figure 11 embodiment, Kato provides only a single array of openings in the inner cover and a single array of openings in the outer cover. Figure 11 differs from the earlier embodiments in depicting two arrays of openings in both the outer and inner covers and it is without question that in Figure 11, Kato teaches that one of the arrays of openings in the inner cover is disposed between the arrays of the outer cover. It is respectfully submitted that there is no motivation in either Kato or the remaining art of record for unilaterally moving the second array of opening in the inner cover of Kato. In fact the Figure 12 embodiment would suggest that Kato clearly intended for one of the array of holes in the inner cover to be closer to the top end than the holes of the outer cover in some embodiments. It is therefore respectfully submitted that the Examiner's proposed further embodiment of Kato that is no where taught or suggested by Kato. Moreover, the Examiner has not cited any other prior art reference motivating the skilled artisan to modify Kato in this regard. It is therefore respectfully submitted that the Examiner has not properly established under Section 103 that the claimed invention would have been obvious from Kato.

It is clear that the initial burden of establishing a basis for denying patentability to a claimed invention rests upon the Examiner. In re Piasecki, 745 F. 2d 1468, 223 USPQ 785 (Fed. Cir. 1984). In establishing a *prima facie* case of obviousness under 35 U.S.C. § 103, it is incumbent upon the Examiner to provide a reason why one of ordinary skill in the art would have been led to arrive at the claimed invention from the prior art. Ex parte Clapp, 227 USPQ 972 (BPAI 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from applicant's disclosure. See, for example, Uniroyal, Inc. v. Rudkin-Wiley Corp. 837 F.2d 1044, 7 USPQ 2d 1434 (Fed. Cir. 1988).

Rejections based on 35 USC §103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The Examiner has initial duty of supplying the factual basis for the rejection. The Examiner may not resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis. See In re Wanery, 379 F.2d 1011, 1017, 154 USPQ 173, 177-78 (CCPA 1967).

With regard to claim 3, again the specific distance *L1* relation set forth in applicant's claims is nowhere taught or suggested in the Kato disclosure or the remaining art of record.

For all the reasons advanced above, reconsideration and withdrawal of the rejection over Kato is solicited.

All objections and rejections having been addressed, it is respectfully submitted that the present application is in condition for allowance and an early Notice to that effect is earnestly solicited.

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Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By:

A handwritten signature in black ink, appearing to read "Michelle N. Lester", written over a horizontal line.

Michelle N. Lester

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